

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CF0582
)	EEOC NO.: 21BA82963
ALFREDO L. ARIAS)	ALS NO.: 10-0031
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, M.D., Spencer Leak, Sr., and Rozanne Ronen presiding, upon Alfredo L. Arias' ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")^[1] of Charge No. 2009CA1020; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

EXPIRATION OF TIME TO FILE COMPLAINT

In support of which determination the Commission states the following findings of fact and reasons:

1. The Petitioner filed a charge of discrimination with the Respondent on August 27, 2008. The Petitioner alleged in his charge that North Shore Transit Incorporated ("Employer") discharged him because of his ancestry, Hispanic, in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). The Respondent had 365 days, or until August 27, 2009, to complete its investigation of the charge.
2. The Respondent did not complete its investigation within 365 days. Thereafter, the Petitioner had 90 days, or until November 30, 2009, to file a Complaint of Civil Rights Violation ("Complaint") with the Commission.
3. The Petitioner did not file a Complaint with the Commission.

^[1] In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

4. On December 15, 2009, the Respondent dismissed the Petitioner's charge because the Petitioner's time to file a Complaint with the Commission had expired.
5. On January 14, 2010, the Petitioner filed this timely Request. In his Request, the Petitioner argues that his charge should not have been dismissed because he never had the opportunity to mediate his charge pursuant to Section 7A-102(B-1) of the Act.
6. In its Response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge pursuant to Section 7A-102(G)(3) of the Act because the Respondent's time to investigate the Petitioner's charge had expired and the Respondent had no record that the Petitioner had filed a Complaint with the Commission. Further, the Respondent argues there was no evidence that the Petitioner and the Employer had agreed to voluntarily submit the charge to mediation pursuant to Section 7A-102(B-1) of the Act. Even if the Employer and the Petitioner had voluntarily agreed to mediate the charge, the Respondent argues mediation would not have extended the Respondent's 365-day investigatory period.

Conclusion

The Commission concludes that the Respondent properly dismissed the Petitioner's charge pursuant to Section 7A-102(G)(3) of the Act because the Respondent failed to complete its investigation within 365 days and the Petitioner had not filed a Complaint with the Commission. Section 7A-102(G)(3) provides:

If an aggrieved party files a complaint with the Human Rights Commission or commences a civil action in circuit court pursuant to paragraph (2) of this subsection, or if the time period for filing a complaint has expired, the Department shall immediately cease its investigation and dismiss the charge of civil rights violation.

775 ILCS 5/7A-102(G)(3) (West 2010).

The Respondent correctly determined that it was mandated by Section 7A-102(G)(3) to dismiss the Petitioner's charge, as it was mandated to "immediately" cease its investigation of the Petitioner's charge upon expiration of the 365 days.

Furthermore, the Petitioner was not entitled to have his charge submitted to mediation. Pursuant to Section 7A-102(B-1) of the Act "[t]he complainant and respondent may agree to voluntarily submit the charge to mediation...." 775 ILCS 5/7A-102(B-1)(West 2010). However, the Act does not provide that voluntary mediation would automatically extend the Respondent's 365-day investigatory period. Rather, pursuant to Section 7A-102(G)(1), the time limit to investigate the

charge may be extended if the parties to the charge agree to an extension in writing. See 775 ILCS 5/7A-102(G)(1) (West 2010).

In his Request, the Petitioner presented no evidence that he and the Employer had agreed in writing to extend the 365-day time period to investigate the Petitioner's charge. Therefore, the Respondent was required to dismiss the Petitioner's charge because the Respondent lost jurisdiction over the Petitioner's charge when the Respondent failed to complete its investigation within 365 days.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and North Shore Transit Incorporated, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

)
)
)

Entered this 28th day of July 2010

Commissioner Sakhawat Hussain, M.D.

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen